

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
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COMMITTEE ON ELECTION LAW

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January 13, 2015

Hon. Benjamin J. Kallos
Council Member, 5th District
Chair, Committee on Governmental Operations
The Council of the City of New York
250 Broadway, Suite 1738
New York, New York 10007

Re: Proposed New York City Council Election Law Legislation

Dear Council Member Kallos:

I am writing on behalf of the Election Law Committee of the New York City Bar Association. Thank you for presenting to our committee pending proposals regarding the improvement of the election process in New York City, and for requesting our input. We appreciate your commitment to making voting in New York City an easier and more accessible process. These proposed bills reflect your dedication.

The largest stumbling block to the success of your proposals is that the Board of Elections in the City of New York (the “City Board”) is not a mayoral agency, and as such is not subject to any laws that the City Council enacts. In addition, many of the issues that you are trying to address are controlled by the New York State Election Law, and it would take action by the State Legislature to make changes. In other cases, it is the New York State Board of Elections (the “State Board”), the state agency charged with oversight of the City Board, which has the authority to make administrative changes, and the City Council has no dominion over the State Board.

That said, the City Council does have considerable influence, and our non-partisan committee comprised of attorneys with extensive experience in election law, both academic and practical, has comments about a number of your bills; we hope that these comments will be a helpful guide going forward. Where we can, this committee is encouraging the Council to take action.

Int. 0062-2014 (CM Garodnick) - Requiring the posting of notice of the new poll site or sites on any former poll site used in the previous four calendar years

This bill is an excellent idea. However, the Council has no authority over the City Board to compel that this be done. We encourage the Council to rephrase this as a recommendation that the City Board adopt this proposal, and think that it is likely that it would accept this recommendation.

Int. 0255-2014 (CM Eugene) - Requiring publication of the Voter Guide in at least eight languages

Requiring that the Voter Guide published by the Campaign Finance Board be translated into additional languages is something that the City Council is able to do, as it has oversight over the Campaign Finance Board. We suggest that the Council work with the Campaign Finance Board to provide clear and practical operational guidelines to ensure that such requirement not be prohibitively burdensome or costly, for example, by making sure that the Campaign Finance Board can continue to target the areas and households that will receive voter guides in languages other than English. We would like to see this addition paired with an option, printed on the guides, offering an opt-out of receiving the paper version and an opt-in to receive the link where the Guide is available online by email. This change may require an amendment to the City Charter, which was written at a time before online access was an easy option.

Int. 0302-2014 (CM Lander) - Requiring the Board of Elections to be included in the Mayor's Management Report

This bill appears not to be necessary, because the City Board already voluntarily participates in the Mayor's Management Report, participation that cannot be mandated for a non-Mayoral agency.¹ To the extent that the Council would mandate additional reporting, it is not clear what additional reporting would be requested, nor what oversight would be practical.

Int. 0376-2014 (CM Cabrera) - Allowing online voting for absentee and military voters for municipal offices

While we agree that the future will and should have options for electronic voting, we have concluded that this bill is ill-conceived. First, there is no available technology at this point which the City Board could use for secure online voting. Furthermore, the City Council would only – and at most – have authority to allow online voting for municipal elections. This limitation means that a person who voted for a City office online would still have to come to the polls or get a second absentee ballot in order to vote for any other office, such as State Legislative office, District Attorney, Judicial Delegate, Judge, District Leader or statewide office, as well as for federal offices. It is this committee's opinion that this option would disenfranchise more people than it would help in any way, even if this change were practical at this time. We would suggest, however, that the deadline for registration to vote be brought in

¹ “Mayor’s Management Report”, Sept. 2014 at 305, *available at* http://www.nyc.gov/html/ops/downloads/pdf/mmr2014/2014_mmr.pdf.

line with the New York State Constitution and be reduced from 25 days before the next election to 10 days.

We conclude that the other related proposed bills, the unnumbered “Allowing for Early Voting for Municipal Offices,” and Int. 0536-2014 (Contemporaneous Registration and Absentee Ballot Request) are likewise inadvisable to enact at this time, for the same reasons as apply to Int. 376. We are especially concerned that the effect of such measures for the City while the State lags behind, will have the opposite effect as is desired: the proposed legislation will decrease, rather than increase, voter enthusiasm and participation. The committee encourages the Council to continue to advocate at the State level, most likely by Resolution and through lobbying, for a period of early voting and for easier access to absentee ballots. Specifically, we would suggest that the City and State Boards be encouraged to develop a system by which voters could request an absentee ballot online, to be delivered to an email address which the voter has registered as his or hers at the time of registration, or by updating the registration to include that information. Security and eligibility for the absentee ballots should be developed alongside this system.

Int. 0508-2014 (CM Kallos) - Allowing online Voter Registration

This bill is a workable improvement to the existing Voter Registration system, and we support its passage. We also suggest that, since it could only apply to residents of the City of New York, the Council enact a resolution calling on the State to implement such a change as well. This is a natural outgrowth of the Motor Voter law, and has built-in security provisions in its section (c), calling for the voter who has registered online to produce at the polling site identification of his or her name and address at the time of the first vote, but the language of the bill should be conformed to the current law and practice that such identification need be shown only the first time that the voter comes to the polling place.

Res. 0281-2014 (CM Rosenthal) - Requiring schools to hold registration drives on a new “Student Voter Registration Day”

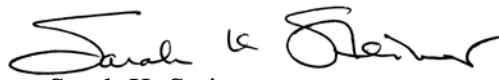
We appreciate the motivation behind this bill, but cannot support this bill as written, for a multitude of reasons, including the terms of City contracts and privacy concerns similar to those that have been expressed regarding holding voter registration drives at homeless shelters and public assistance centers. The Council does not have authority to mandate that schools institute a “Student Voter Registration Day.” The committee approves of and encourages a mechanism to register high school students who are 18 years old or will turn 18 years old in a calendar year. It is our suggestion that such a process might be accomplished by a Mayoral Proclamation in partnership with the New York City Schools Chancellor. We advise rewriting this bill to call for this program, and also encourage the development of a civics syllabus for such a day.

With regard to the un-numbered proposed resolution calling on high school students to be permitted to serve as poll workers, New York State Election Law section 3-400(6) requires that they be registered voters, and so, absent a change in the State Election Law, only high school students who are over 18 years old and registered to vote would be – and already are – eligible to become poll workers.

* * *

As always, we are available to comment on future bills and to work with you to implement our recommendations, and are very pleased to see your interest in making voting an easier, more pleasant and more democratic process.

Respectfully,


Sarah K. Steiner

cc:

Hon. Melissa Mark-Viverito, Speaker, New York City Council
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Hon. Helen Rosenthal, Member, New York City Council